

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 45 OF 1990

(By State against acquittal)

The State of Maharashtra .. Appellant

vs

Suresh Dattatraya Mohrir

A-1, Om Malayagiri Coop Hsg Scty

Nr Shri Krishna Nagar,

Borivali (E) Bombay-66. .. Respondent

Mr. A.M.Shringapure A.P.P. for Appellant-State

Mr.A.G.Joshi for Respondent

CORAM : V.M.KANADE, J

DATE : 28TH OCTOBER, 2004

P.C.

1. The State of Maharashtra is challenging the judgment and order passed by the Special Judge for

Greater Bombay in Special Case No. 2 of 1987 dated 21st September, 1989. By the said judgment and order the Special Judge acquitted the accused of the offences with which he was charged.

2. The prosecution case is that the accused who was working as a Sales Tax Officer demanded a bribe amount of Rs.1000/- on 24th February 1986 and on 28th February 1986 he demanded and accepted the bribe from the complainant. The complainant was carrying on business of buying and selling empty bottles in the market. He was also dealing in the business of selling wooden boxes. It is an admitted position that the complainant was liable to pay sales tax under the provisions of the Bombay Sales Tax Act. The complainant received a notice on 21st February 1986 from the Sales Tax Department whereby he was asked to attend the office on 27th February, 1986. The complainant however, met the accused in the office on 24th February, 1986. He informed the accused that he had deposited the sales tax of Rs.880/- on 13th February, 1986. The accused informed him that the complainant was liable to pay penalty of Rs.370/- for the late payment of tax as the complainant had also sold the wooden boxes to one company called "Rodata Company". The accused told the complainant that he was liable to pay tax towards the transactions with the said company. The complainant however stated that the said company had

undertaken to pay the said sales tax. The accused therefore demanded a bribe of Rs.1000/- from the complainant and he asked him to get the said amount on 27th February, 1986. On the said date, the accused asked the complainant to give with the said amount of bribe of Rs.1000/-. However, the complainant told him that he did not have the said amount. The accused then asked him to come on the next day along with the bribe and also threatened the complainant that if the said amount was not paid he would impose heavy penalty of Rs.2000/-. The complainant therefore filed a complaint on 28th February, 1986 and thereafter a pre-trap and post-trap panchanama was prepared. Two panchas were called and thereafter on the next day, the raiding party went to the office of the accused. The accused was apprehended and money was recovered. Sanction to prosecute the accused was granted. The accused in addition to pleading not guilty filed his written statement and in his oral statement as well as written statement he has stated that he took charge as Sales Tax Officer and he met the complainant for the first time on 4th February 1986. According to the accused, he asked the complainant to produce the books of account. The complainant met the accused and informed him that the sales tax receipt for financial year 1983-84 was misplaced and therefore he paid sales tax of Rs.880/-. The complainant again was called to the

office on 27th February 1986. However, he did not turn up on that day. According to the accused, he had informed the complainant that he was liable to pay penalty of Rs.370/- which was mandatory in nature and would not be waived any any Sales Tax Officer. According to the accused, the complainant planted marked currency notes in the file which was given to him and after the complainant and Vanjari had left after studying the file, the currency notes fell down and members of the raiding party came in the office.

3. From the evidence adduced by the prosecution, it can be seen that the complainant could not produce the receipt for the payment of sales tax for the year 1983-84. He was called by the accused to come on different dates along with the books of account. However, admittedly he never turned up at the office of the accused along with books of account. The complainant admitted that he had paid Rs.880/- on 13th February, 1986 towards sales tax. He could not produce the earlier receipt of payment of sales tax and as under the provisions of the Sales Tax Act, he was liable to pay penalty for the payment of sales tax which was to the tune of Rs.370/-. Thus, the penalty could not have been waived by the accused. From the evidence it further transpires that on none of the dates the complainant attended the office of the accused. Thus, the story of demand which is

made on two dates i.e. on 24th February 1986 and 28th February 1986 appears to be doubtful. The complainant had received notices from the department asking him to remain present on the various dates. The complainant instead of being present on the said dates alleges that he had met the accused a few dates prior to the said date. Further, from the evidence it has come on record that so far as the alleged transaction which the complainant had with the Rodata company, he was not liable to pay tax on the undertaking being given by the company that they would pay the sales tax and for that purpose Form no. 15 had to be filled up. If that had been the case, there was no reason for the complainant for having accepted the demand made by the accused as legally the company had agreed to pay the said taxes. The accused therefore had no occasion to demand the bribe of Rs.1000/-. In any case, if the penalty had been levied, it was to be paid by the company and not by the complainant. The story of the complainant therefore of the demand of bribe of Rs.1000/- appears to be doubtful. The complainant thereafter has kept the said amount of Rs.1000/- in one of the files which were on the table of the accused. The demand made by the accused was not proved as the amount was not directly paid to the accused. The acceptance of the amount by the accused therefore has not been conclusively proved. The trial court has passed a reasoned order and has

given cogent reasons for coming to the conclusion that the demand and acceptance had not been proved by the prosecution. The learned A.P.P. has taken me through the judgment and order of the trial Court as also the evidence adduced by the prosecution. In my view, the findings recorded by the trial Court are based on appreciation of evidence and the finding recorded in the judgment cannot be said to be unreasonable or perverse.

4. Criminal Appeal is dismissed. Findings of the trial Court is confirmed.

V.M.KANADE, J

High Court

A.S.

Criminal Appeal 45/1990

(By State against acquittal)

The State of Maharashtra

vs

Suresh Dattatraya Mohrir

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Mr.A.M.Shringarpure APP for State

Mr.A.G.Joshi for Respondent

..

CORAM : V.M.KANADE, J

DATE: 28/10/04

For the reasons recorded separately in the accompanying judgment, the court dismisses the appeal preferred by the State of Maharashtra.

for Addl.Registrar (J)

(R.N.Ghanate)

P.S. to Kanade, J

High Court

A.S.

Criminal Appeal No. 23 of 1988

The State of Maharashtra

VS

Ahmed Hussain Quadiri

..

Mr.A.M.Shringarpure APP for State

Mr.R.A.Shaikh for Respt no.2

Mr.N.V.Walawalkar (apptd) for Respt no.1

Mr.J.C.Satpute for Union of India

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CORAM : V.M.KANADE,

DATE: 21/10/2004

For the reasons recorded separately in the
accompanying judgment, the court dismisses the
appeal preferred by the State of Maharashtra

for Addl.Registrar (J)

(R.N.Ghanate)

P.S. to Kanade, J

HIGH COURT

A.S.

CRIMINAL APPEAL NO. 45 OF 1990

The State of Maharashtra

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Mr.A.M.Shringarpure APP for Appellant

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Coram: V.M.Kanade, J

Date: 28/10/2004